



Guernsey investment funds market update – November 2021

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Expansion of economic substance requirements to partnerships

The Income Tax (Substance Requirements) (Implementation) Regulations, 2021, which came into force in Guernsey on 30 June 2021, consolidate and update the original 2018 economic substance regulations and previous amendments thereto. Most notably, certain Guernsey partnerships carrying on a relevant activity are now within scope of the economic substance requirements in Guernsey. Please see our [full briefing](#) for further information. Crucially, however, limited partnership collective investment schemes authorised or registered by the Guernsey Financial Services Commission (“GFSC”) are out of scope. Any Guernsey entity undertaking fund management on behalf of the limited partnership fund (e.g. the Guernsey general partner or a separate Guernsey manager) will remain in scope for substance purposes.

Revision of finance laws

With effect from 1 November 2021, Guernsey has introduced revised investment and financial supervisory and enforcement laws (in relation to investment business, banking business, insurance business and fiduciary business). This includes The Protection of Investors (Bailiwick of Guernsey) Law, 2020 (the “New POI Law”), pursuant to which funds are authorised or registered and investment licensees acting in connection with funds (such as investment managers and general partners) are licenced, and The Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020 (the “New Enforcement Law”), which empowers the GFSC to investigate and enforce any contravention of the new supervisory laws (including the New POI Law) and consolidates and makes consistent the enforcement powers across the finance industry

(which were previously set out in the individual supervisory laws), as well as expanding and enhancing those powers. Notable changes include:

- the introduction of three categories of “supervised roles” in relation to the change of control of a licensee. The GFSC must approve the appointment of any person in an “approved supervised role”, must be notified prior to any appointment of a person in a “vetted supervised role” and is deemed not to object if no response is received within 60 days, and requires prior notification only of those in “notified supervised roles”. Directors and controllers of licensees under the New POI Law, among other categories of persons, are classified as being in Vetted Supervised Roles;
- previously certain entities (for instance the general partner of a limited partnership fund) would, where acting in relation to certain vehicles ancillary to the fund, be subject to the requirements of The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 and would apply for a discretionary exemption from the requirements of that law (for which a fee was payable, currently £1,093). The revised Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020 provides for an automatic exemption when acting in connection with ancillary vehicles in connection with a fund. However, to date regulations defining ancillary vehicles have yet to be introduced and for the time being it is still necessary to apply for a discretionary exemption;
- the New POI Law has introduced the new concept of directions, which the GFSC can issue to a “directed person” (which includes, among others, a licensee or former licensee, fund or former fund and those in supervised roles)

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requiring them to do or not to do any thing, as appear to the GFSC to be necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre, whether for the purpose of safeguarding assets or otherwise;

- the Prospectus Rules 2018 have been replaced with The Prospectus Rules and Guidance 2021. The new rules, like the previous rules, set out the disclosure requirements with respect to prospectuses of registered funds (among other entities). The new rules are materially the same, but now include non-binding guidance which suggests ways of complying with the rules;
- the Licensees (Conduct of Business) Rules 2021 require the board of directors of any licensee administered by another firm in the Bailiwick to include at least one Guernsey resident director, and for the board of any other licensee to include at least two Guernsey resident directors. Under the previous rules, this was stated only to be an expectation of the GFSC, not a requirement. Practically speaking, this is unlikely to require changes to the composition of licensee boards, as boards will typically consist of at least this number of Guernsey resident directors already, for the purposes of complying with any substance requirements to which a licensee may be subject and to demonstrate management and control of the licensee is taking place from within Guernsey;
- under the New Enforcement Law, enforcement requirements may be imposed on “accountable persons”. This is a wider group of persons than was previously the case and includes, among others, licensees and former licensees, funds and former funds, and employees and officers of licensees and funds. Accountable persons may potentially face the following sanctions. The GFSC may, among other things:
 - a. obtain information, appoint inspectors and issue new “enforcement requirements” (similar to conditions and directions which may previously have been imposed under the supervisory laws);
 - b. require a GFSC interview;
 - c. revoke, suspend and now even impose a licence on a company or other person who the GFSC considers has been carrying out regulated business without a licence (thus bringing that person and those connected to it within greater regulatory control and potential sanctions under the New Enforcement Law);
 - d. accept voluntary undertakings to do or not do something from any person in relation to any relevant financial business;
 - e. issue private or public reprimands and impose prohibition orders;
 - f. impose financial penalties where there has been (i) a contravention of, among other laws, the New Enforcement Law or the New POI Law or (ii) a failure to fulfil any of the applicable minimum criteria for licensing.



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